

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

MISSOULA DIVISION

**FILED**

**SEP 17 2010**

PATRICK E. DUFFY, CLERK

By DEPUTY CLERK, MISSOULA

UNITED STATES OF AMERICA,	)	Cause No. CR 09-004-M-DWM
	)	CV 10-106-M-DWM
Plaintiff/Respondent,	)	
	)	
vs.	)	ORDER DISMISSING MOTION AND
	)	DENYING CERTIFICATE OF
DANIEL LYN BENNETT,	)	APPEALABILITY
	)	
Defendant/Movant.	)	
_____	)	

On September 9, 2010, Defendant Daniel Lyn Bennett filed a motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. Bennett filed the § 2255 motion pro se. He currently has an appeal pending before the Ninth Circuit Court of Appeals, No. 09-30346. Notice of Appeal (doc. 232).

District courts do not consider § 2255 motions while a direct appeal is pending. Feldman v. Henman, 815 F.2d 1318, 1320 (9th Cir. 1987) (as amended); United States v. Deeb, 944 F.2d 545, 548 (9th Cir. 1991); Rule 5, Rules Governing Section 2255 Proceedings for the United States District Courts, advisory committee's note (quoting Womack v. United States, 395 F.2d 630, 631 (D.C. Cir. 1968)). This is

well-settled law. A certificate of appealability is not warranted. Lozada v. Deeds, 498 U.S. 430, 432 (1991) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 n.4 (1983)); Slack v. McDaniel, 529 U.S. 473, 484 (2000).

Accordingly, IT IS HEREBY ORDERED:

1. Bennett's motion to vacate, set aside, or correct the sentence (doc. 281) is DISMISSED without prejudice to refile on completion of the direct appeal process, including any petition for writ of certiorari.

2. A certificate of appealability is DENIED.

3. The Clerk of Court shall enter a judgment of dismissal in Cause No. CV 10-106-M-DWM.

DATED this 17 day of September, 2010.



Donald W. Molloy  
United States District Court